

**House Study Bill 605 - Introduced**

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON ANDERSON)

**A BILL FOR**

1 An Act relating to the uniform residential landlord and tenant  
2 Act and related forcible entry and detainer actions.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 535.2, subsection 7, Code Supplement  
2 2011, is amended to read as follows:

3 7. This section does not apply to a charge imposed for late  
4 payment of rent. ~~However, in the case of a residential lease,~~  
5 ~~a late payment fee shall not exceed ten dollars a day or forty~~  
6 ~~dollars per month.~~

7 Sec. 2. Section 562A.4, Code 2011, is amended by adding the  
8 following new subsection:

9 NEW SUBSECTION. 3. The court may, in any action on a rental  
10 agreement, award reasonable attorney fees to the prevailing  
11 party.

12 Sec. 3. Section 562A.6, Code 2011, is amended by adding the  
13 following new subsections:

14 NEW SUBSECTION. 7A. "*Presumption*" means that the trier of  
15 fact must find the existence of the fact presumed unless and  
16 until evidence is introduced which would support a finding of  
17 its nonexistence.

18 NEW SUBSECTION. 11A. "*Resident*" means an occupant of a  
19 dwelling unit who is at least eighteen years of age.

20 Sec. 4. Section 562A.6, subsection 9, Code 2011, is amended  
21 to read as follows:

22 9. "*Rent*" means a payment to be made to the landlord under  
23 the rental agreement, including late fees pursuant to section  
24 562A.9, subsection 3A, and amounts due to the landlord under  
25 other provisions of this chapter.

26 Sec. 5. Section 562A.8, Code 2011, is amended to read as  
27 follows:

28 **562A.8 Notice Method of notice and service of process.**

29 1. A written notice of termination as required by section  
30 562A.27, subsection 1, 2, or 5, a written notice of termination  
31 as required by section 562A.34, subsection 1, 2, or 3, a  
32 notice of termination and notice to quit as required by  
33 section 562A.27A, or a notice to quit as required by section  
34 648.3, shall be served upon the tenant by one of the following  
35 methods:

1 a. Personal service pursuant to rule of civil procedure  
2 1.305, Iowa court rules, for the personal service of original  
3 notice.

4 b. Delivery evidenced by an acknowledgment of service  
5 that is signed and dated by a resident of the dwelling unit.  
6 Delivery under this paragraph of a single notice shall be  
7 deemed to provide notice to all tenants and occupants of the  
8 rental unit.

9 c. Posting the notice on or near a primary entrance door  
10 of the subject premises and mailing by regular mail and by  
11 certified mail as defined in section 618.15.

12 d. A method of providing notice that results in the notice  
13 actually being received by the tenant.

14 ~~1.~~ 2. Notices All other notices required under this  
15 chapter, ~~except those notices identified in section 562A.29A,~~  
16 shall be served as follows:

17 a. A landlord shall serve notice on a tenant by one or more  
18 of the following methods:

19 (1) Hand delivery to the tenant as evidenced by a written  
20 confirmation of delivery signed and dated by the landlord.

21 (2) Delivery evidenced by an acknowledgment of ~~delivery~~  
22 service that is signed and dated by a resident of the dwelling  
23 unit who is at least eighteen years of age. Delivery under  
24 this subparagraph of a single notice shall be deemed to provide  
25 notice to all tenants of the dwelling unit.

26 (3) Personal service pursuant to rule of civil procedure  
27 1.305, Iowa court rules, for the personal service of original  
28 notice.

29 (4) Mailing by both regular mail and certified mail, as  
30 defined in section 618.15, to the address of the dwelling unit  
31 or to an address provided by the tenant for mailing.

32 (5) Posting on the primary entrance door of the dwelling  
33 unit. ~~A notice posted according to this subparagraph shall be~~  
34 ~~posted within the applicable time period for serving notice and~~  
35 ~~shall include the date the notice was posted.~~

1 (6) A method of providing notice that results in the notice  
2 actually being received by the tenant.

3 b. A tenant shall serve notice on a landlord by one or more  
4 of the following methods:

5 (1) Hand delivery to the landlord or the landlord's agent  
6 designated under section 562A.13 at the landlord's business  
7 office, as evidenced by a written confirmation of delivery  
8 signed and dated by the tenant.

9 (2) Delivery evidenced by an acknowledgment of delivery  
10 that is signed and dated by the landlord or the landlord's  
11 agent designated under section 562A.13.

12 (3) Personal service pursuant to rule of civil procedure  
13 1.305, Iowa court rules, for the personal service of original  
14 notice.

15 ~~(4) Delivery to an employee or agent of the landlord at the~~  
16 ~~landlord's business office.~~

17 ~~(5)~~ (4) Mailing by both regular mail and certified mail,  
18 as defined in section 618.15, to the address of the landlord's  
19 business office or to an address designated by the landlord for  
20 mailing.

21 ~~(6)~~ (5) A method of providing notice that results in the  
22 notice actually being received by the landlord.

23 3. If service of notice includes posting, the notice shall  
24 be posted within the same time period that is applicable  
25 to other methods of giving notice under the circumstances.  
26 The posted notice shall set forth, on its face, the date  
27 of posting. An affidavit signed by the person posting and  
28 notarized or certified under penalty of perjury pursuant  
29 to section 622.1 shall be evidence of service of notice by  
30 posting. Service of notice by posting is deemed completed one  
31 day after the notice is posted.

32 ~~2.~~ 4. Notice served by mail ~~under this section~~ is deemed  
33 completed ~~four~~ three days after the ~~notice is deposited in the~~  
34 ~~mail and postmarked for delivery, whether or not the recipient~~  
35 ~~signs a receipt for the notice~~ date of the postmark.

1     5. In the case of service of a notice by multiple methods,  
2 the latest date of completed service shall control the  
3 computation of time.

4     Sec. 6. Section 562A.9, Code 2011, is amended by adding the  
5 following new subsection:

6     NEW SUBSECTION. 3A. A rental agreement shall not provide  
7 for a late fee that exceeds twenty dollars per day or eighty  
8 dollars per month.

9     Sec. 7. Section 562A.11, subsection 1, paragraph c, Code  
10 2011, is amended to read as follows:

11     c. Agrees to pay the other party's attorney fees, except  
12 that a written agreement may provide notification that attorney  
13 fees may be awarded to the prevailing party in the event of  
14 court action; or

15     Sec. 8. Section 562A.12, subsection 8, Code 2011, is amended  
16 by striking the subsection.

17     Sec. 9. Section 562A.27, subsection 3, Code 2011, is amended  
18 to read as follows:

19     3. Except as provided in this chapter, the landlord may  
20 recover damages and obtain injunctive relief for noncompliance  
21 by the tenant with the rental agreement or section 562A.17  
22 unless the tenant demonstrates affirmatively that the  
23 tenant has exercised due diligence and effort to remedy any  
24 noncompliance, and that the tenant's failure to remedy any  
25 noncompliance was due to circumstances beyond the tenant's  
26 control. ~~If the tenant's noncompliance is willful, the~~  
27 ~~landlord may recover reasonable attorney fees.~~

28     Sec. 10. Section 562A.30, Code 2011, is amended by striking  
29 the section and inserting in lieu thereof the following:

30     **562A.30 Waiver of landlord's right to terminate.**

31     Acceptance of performance by the tenant that varies from the  
32 terms of the rental agreement or rules subsequently adopted  
33 by the landlord shall not be a waiver of the landlord's right  
34 to terminate the rental agreement for that breach of the  
35 agreement. Failure by the landlord to promptly assert rights

1 under this section shall not be a waiver of such rights or a  
2 waiver of any existing or subsequent breach. Waiver of any  
3 breach shall not constitute a waiver of any subsequent and  
4 similar breach.

5 Sec. 11. Section 562A.32, Code 2011, is amended to read as  
6 follows:

7 **562A.32 Remedy after termination.**

8 If the rental agreement is terminated by either party, the  
9 landlord may have a claim for possession ~~and for rent~~ and a  
10 separate claim for rent, actual damages for breach of the  
11 rental agreement, and reasonable attorney fees ~~as provided in~~  
12 ~~section 562A.27~~.

13 Sec. 12. Section 562A.36, subsection 2, Code 2011, is  
14 amended to read as follows:

15 2. If the landlord acts in violation of subsection 1 of  
16 this section, the tenant may recover from the landlord the  
17 actual damages sustained by the tenant and reasonable attorney  
18 fees, and has a defense in action against the landlord for  
19 possession. In an action by or against the tenant, evidence  
20 of a ~~good-faith~~ good-faith complaint within one year prior to  
21 the alleged act of retaliation creates a presumption that the  
22 landlord's conduct was in retaliation. The presumption does  
23 not arise if the tenant made the complaint after notice of a  
24 proposed rent increase or diminution of services. Evidence  
25 by the landlord that legitimate costs and charges of owning,  
26 maintaining or operating a dwelling unit have increased shall  
27 be a defense against the presumption of retaliation when a  
28 rent increase is commensurate with the increase in costs and  
29 charges. ~~"Presumption" means that the trier of fact must find~~  
30 ~~the existence of the fact presumed unless and until evidence is~~  
31 ~~introduced which would support a finding of its nonexistence.~~

32 Sec. 13. Section 648.3, Code 2011, is amended to read as  
33 follows:

34 **648.3 Notice to quit.**

35 1. Before action can be brought under any ground specified

1 in section 648.1, except subsection 1, three days' notice to  
2 quit must be given to the defendant in writing. However, a  
3 landlord who has given a tenant three days' notice to pay rent  
4 and has terminated the tenancy as provided in section 562A.27,  
5 subsection 2, or section 562B.25, subsection 2, if the tenant  
6 is renting the manufactured or mobile home or the land from the  
7 landlord, may commence the action without giving a three-day  
8 notice to quit.

9 2. A notice to quit required under subsection 1 shall  
10 be served on the defendant according to one or more of the  
11 following methods:

12 a. Delivery evidenced by an acknowledgment of ~~delivery~~  
13 service that is signed and dated by a resident of the premises  
14 who is at least eighteen years of age. Delivery under this  
15 paragraph of a single notice shall be deemed to provide notice  
16 to ~~the defendant~~ all tenants and occupants of the rental unit.

17 b. Personal service pursuant to rule of civil procedure  
18 1.305, Iowa court rules, for the personal service of original  
19 notice.

20 c. Posting the notice on the or near a primary entrance door  
21 of the subject premises and mailing by both regular mail and  
22 certified mail, as defined in section 618.15, ~~to the address~~  
23 ~~of the premises or to the defendant's last known address,~~  
24 ~~if different from the address of the premises.~~ A notice  
25 ~~posted according to this paragraph shall be posted within the~~  
26 ~~applicable time period for serving notice and shall include the~~  
27 ~~date the notice was posted.~~

28 d. A method of providing notice that results in the notice  
29 actually being received by the tenant.

30 2A. If service of notice includes posting, the notice  
31 shall be posted within the same time period that is applicable  
32 to other methods of giving notice under the circumstances.  
33 The posted notice shall set forth, on its face, the date of  
34 the posting. An affidavit signed by the person posting and  
35 notarized or certified under penalty of perjury pursuant

1 to section 622.1 shall be evidence of service of notice by  
2 posting. Service of notice by posting is deemed completed one  
3 day after the notice is posted.

4 ~~3. A notice to quit~~ Notice served by mail ~~under this~~  
5 ~~section~~ is deemed completed ~~four~~ three days after the notice  
6 ~~is deposited in the mail and postmarked for delivery, whether~~  
7 ~~or not the recipient signs a receipt for the notice~~ date of the  
8 postmark.

9 4. In the case of service of a notice by multiple methods,  
10 the latest date of completed service shall control the  
11 computation of time.

12 Sec. 14. Section 648.5, subsection 2, paragraphs a and c,  
13 Code 2011, are amended to read as follows:

14 a. Delivery evidenced by an acknowledgment of service that  
15 is signed and dated by a resident of the premises who is at  
16 least eighteen years of age. Delivery under this paragraph  
17 of a single notice shall be deemed to provide notice to all  
18 tenants or residents of the premises. Service of original  
19 notice under this paragraph is invalid if the acknowledgment of  
20 service is signed and dated less than three days prior to the  
21 hearing.

22 c. If service cannot be made following two attempts using  
23 a method specified under paragraph "a" or "b", by posting  
24 on or near the primary entrance door of the premises and  
25 mailing by both regular mail and certified mail, as defined  
26 in section 618.15, to the address of the premises or to the  
27 defendant's last known address, if different from the address  
28 of the premises. An original notice posted according to this  
29 paragraph shall be posted not less than three days prior to  
30 the hearing and shall include the date the original notice was  
31 posted. Service of original notice by mailing shall occur not  
32 less than three days prior to the hearing.

33 Sec. 15. Section 648.5, subsection 3, Code 2011, is amended  
34 to read as follows:

35 3. Service of original notice by mail is deemed completed

1 ~~four~~ three days after the notice is ~~deposited in the mail and~~  
2 postmarked for delivery, whether or not the recipient signs a  
3 receipt for the original notice.

4 Sec. 16. Section 714H.4, subsection 1, Code 2011, is amended  
5 by adding the following new paragraph:

6 NEW PARAGRAPH. 1. A rental agreement or other  
7 landlord-tenant relationship as set forth in chapter 562A.

8 Sec. 17. REPEAL. Section 562A.29A, Code 2011, is repealed.

9 EXPLANATION

10 This bill makes changes to Code chapter 562A, the uniform  
11 residential landlord and tenant Act, and related provisions in  
12 Code chapter 648 (forcible entry and detainer).

13 The bill strikes language regarding maximum fees for late  
14 payment of rent in Code section 535.2, and the substance of  
15 the provision is transferred to Code section 562A.9, except  
16 that the bill increases the maximum payment that may be imposed  
17 for late payment of rent from \$10 a day or \$40 per month to an  
18 amount not to exceed \$20 per day or \$80 per month.

19 The bill amends Code section 562A.6 regarding general  
20 definitions for Code chapter 562A. The bill strikes language in  
21 Code section 562A.36, concerning the meaning of "presumption",  
22 and transfers the substance of the provision to Code section  
23 562A.6. The bill defines "resident" as an occupant of a  
24 dwelling unit who is at least 18 years of age. The bill amends  
25 the definition of "rent" to state that rent also means a  
26 payment to be made to the landlord pursuant to Code chapter  
27 562A, including late fees as provided in Code section 562A.9.

28 The bill amends Code section 562A.8, regarding method  
29 of notice and service of process, to transfer and modify  
30 the provisions contained in Code section 562A.29A, which  
31 is repealed by the bill. The bill also makes changes to  
32 provisions regarding service of notice to a tenant when serving  
33 a written notice of termination pursuant to Code section  
34 562A.27, a notice of termination and notice to quit pursuant to  
35 Code section 562A.27A, or a notice to quit as required by Code

1 section 648.3. The bill provides that the delivery of a single  
2 notice when the delivery is evidenced by an acknowledgment of  
3 service that is signed and dated by a resident of the dwelling  
4 unit is deemed to provide notice to all tenants of the dwelling  
5 unit. The bill amends the service of notice provided by  
6 posting to allow posting on or near the primary entrance door  
7 rather than only on the primary entrance door. The bill adds  
8 that a method of providing notice that results in the notice  
9 actually being received by the tenant is a valid method of  
10 notice.

11 The bill provides that a notice of termination pursuant to  
12 Code section 562A.34, related to holdover tenancies, shall be  
13 served in the same manner as notices of termination and notices  
14 to quit. Specifically, the bill amends the notice provision  
15 for termination pursuant to Code section 562A.34 to provide  
16 that the delivery of a single notice when the delivery is  
17 evidenced by an acknowledgment of service that is signed and  
18 dated by a resident of the dwelling unit is deemed to provide  
19 notice to all tenants of the dwelling unit. Under the bill,  
20 service by posting allows the person posting to post on or near  
21 the primary entrance door of the premises, but also requires  
22 mailing the notice by regular and certified mail. The bill  
23 does not allow notice by hand delivery or notice by mailing by  
24 both regular and certified mail as valid methods of service of  
25 notice of termination of a holdover tenancy.

26 The bill also amends the method of notice provided in Code  
27 section 562A.8 for all other types of notice required under  
28 the Code chapter. The bill requires hand delivery of a notice  
29 to the tenant to be evidenced by a written confirmation of  
30 delivery signed and dated by the landlord. The bill provides  
31 that delivery of a single notice evidenced by an acknowledgment  
32 of service, rather than an acknowledgment of delivery, that is  
33 signed and dated by a resident of the dwelling unit is deemed  
34 to provide notice to all tenants of the dwelling unit. The  
35 bill requires hand delivery of a notice to the landlord or the

1 landlord's agent to be delivered to the landlord's business  
2 office, as evidenced by a written confirmation of delivery  
3 signed and dated by the tenant. The bill strikes the provision  
4 in current law that allows delivery to an employee or agent  
5 of the landlord at the landlord's business office as a valid  
6 method of service.

7 The bill provides that service of notice by posting is  
8 complete one day after notice is posted. The bill decreases  
9 the number of days from four to three before a notice served  
10 by mail is deemed complete. The bill provides that when  
11 using multiple methods of service, the latest date of service  
12 controls the computation of time.

13 The bill amends Code section 562A.11 concerning prohibited  
14 provisions in rental agreements by adding that the parties may  
15 enter into a written agreement to provide notification that  
16 attorney fees may be awarded to the prevailing party in the  
17 event of court action.

18 The bill amends Code section 562A.12, relating to security  
19 deposits, by striking a provision regarding an award of  
20 reasonable attorney fees, but the substance of the provision is  
21 transferred to Code section 562A.4, relating to administration  
22 of remedies and their enforcement under Code chapter 562A,  
23 generally. The bill makes corresponding amendments to  
24 Code section 562A.27, regarding noncompliance with a rental  
25 agreement, and Code section 562A.32, regarding remedies after  
26 termination.

27 The bill strikes and rewrites Code section 562A.30,  
28 relating to waiver of a landlord's right to terminate a  
29 rental agreement, to provide that a landlord's acceptance of  
30 a tenant's performance that varies from the rental agreement  
31 or rules does not constitute a waiver of the landlord's right  
32 to terminate the rental agreement for that breach. The bill  
33 further states that the landlord's failure to promptly assert  
34 rights is not a waiver of the landlord's rights or of any  
35 existing or subsequent breach. The bill provides that a waiver

1 of any breach does not constitute a waiver of any subsequent  
2 breach.

3 The bill amends provisions in Code section 648.3, regarding  
4 service of a notice to quit, to mirror the method of notice  
5 provisions in Code section 562A.8, as amended by the bill.  
6 The bill provides that an affidavit signed by the person  
7 posting and notarized or certified under penalty of perjury  
8 constitutes evidence of the service of notice. Service of  
9 notice by posting is complete one day after notice is posted.  
10 Notice served by certified mail is deemed completed three days  
11 after date of postmark rather than four days after notice is  
12 deposited and postmarked. The bill also provides that when  
13 notice is served by multiple methods, the latest date of  
14 service controls the computation of time.

15 The bill amends Code section 648.5 to provide that service by  
16 mail of original notice of a forcible entry and detainer action  
17 is deemed completed three days after the notice is postmarked  
18 for delivery, rather than four days after the mail is deposited  
19 and postmarked for delivery.

20 The bill amends Code section 714H.4 to provide that the  
21 consumer fraud chapter regarding private actions does not apply  
22 to a rental agreement or other landlord-tenant relationship  
23 under Code chapter 562A.